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## MORTGAGE AND SECURITY AGREEMENT

Dated as of June 6, 1988

from

AMERICAN NATIONAL BANK AND TRUST COMPANY  
OF CHICAGO, a national banking association,  
not personally but solely as trustee for the  
Partnership (as defined in the Agreement referred  
to below) under Trust Agreement dated  
December 1, 1985 and known as Trust No. 66007,  
as Mortgagor,

to

MELLON BANK, N.A.,  
as Mortgagee

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Exhibit A Legal Description

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## MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (this "Mortgage"), dated as of June 6, 1988, made by AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, not personally but solely as trustee for the Partnership (as defined in the Agreement referred to below) under Trust Agreement dated December 1, 1985 and known as Trust No. 66007 ("Mortgagor"), to MELLON BANK, N.A., a national banking association having an office at 300 Two Mellon Bank Center, Pittsburgh, Pennsylvania 15259 ("Mortgagee"),

### W I T N E S S E T H:

WHEREAS, Mortgagor is justly indebted to Mortgagee in the principal sum of \$3,800,000, or so much thereof as may be advanced in accordance with a Construction Loan Agreement of even date herewith between Mortgagor and Mortgagee (as the same may be amended, modified or supplemented from time to time, the "Loan Agreement"), as evidenced by, and to be repaid with interest thereon in accordance with, a promissory note of even date herewith made by Partnership and Mortgagor to Mortgagee (as the same may be extended, renewed, refinanced, refunded, amended, modified or supplemented from time to time, and any replacement or successor note, the "Note");

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure:

- (a) the payment of the indebtedness evidenced by the Note, both principal and interest, and all amounts due or to become due under the Loan Agreement, the Note, this Mortgage and the other Loan Documents (as defined in the Loan Agreement), and any extensions, renewals, replacements or modifications of any thereof; and
- (b) the performance and observance of all covenants, agreements, obligations and liabilities of Partnership and Mortgagor under or pursuant to the provisions of the Loan Agreement, the Note, this Mortgage and the other Loan Documents, and any extensions, renewals, replacements or modifications of any thereof;

(all of the foregoing being hereinafter collectively called the "Secured Obligations"), Mortgagor, intending to be legally bound, does hereby grant, bargain, sell, convey, warrant, assign, transfer, mortgage, pledge, grant a security interest in, set over and confirm unto Mortgagee, and its successors and assigns, all of Mortgagor's estate, right, title, interest, property, claim and demand, now owned or held or hereafter acquired or arising, in and

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to the following property and rights (collectively, the "Mortgaged Property"):

(a) the lands and premises more particularly described in Exhibit A hereto, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and also (i) any land lying within the right-of-way of any streets, open or proposed, adjoining the same, (ii) any easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and (iii) any and all sidewalks, alleys, strips and gores of land adjacent thereto or used in connection therewith (all of the foregoing being hereinafter collectively called the "Land");

(b) all buildings, structures and other improvements now or hereafter erected or placed on the Land (collectively, the "Improvements");

(c) all materials (as defined in the Loan Agreement) and all machinery, apparatus, equipment, fittings, fixtures, goods, chattels and other articles of personal property now or hereafter located on, attached to or used in connection with the Land or the Improvements (other than any personal property owned by any tenant occupying the Improvements and used by such tenant in connection with such occupancy), and all replacements thereof, additions thereto and substitutions therefor (all of the foregoing being hereinafter collectively called the "Equipment"), together with all deposits or payments made on any Equipment in connection with the conditional purchase thereof and all leases by Mortgagor as lessee of Equipment;

(d) all licenses, permits, authorizations and agreements from Official Bodies (as defined in Section 1.02) relating to the ownership, construction, occupancy, operation, management or use of the Land, the Improvements or the Equipment;

(e) all contracts, licenses and agreements relating to the ownership, design, construction, occupancy, operation, management or use of the Land, the Improvements or the Equipment;

(f) all the remainder or remainders, reversion or reversions, rents, revenues, issues, profits, royalties, income and other benefits derived from any of the foregoing, all of which are hereby assigned to Mortgagee, who is hereby authorized to collect and receive the same, to give proper receipts and acquittances therefor and to apply the same to the payment of the Secured Obligations, notwithstanding the fact that the same may not then be due and payable, subject, however, to the right of Mortgagor to receive and use the

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same unless and until an Event of Default (as defined in Section 4.01) shall occur;

(g) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including all proceeds of the insurance required to be maintained by this Mortgage, all awards or other compensation heretofore or hereafter made to Mortgagor as the result of any Condemnation (as defined in Section 2.06), all awards for changes of the grades of streets and all awards for severance damages, all of which are hereby assigned to Mortgagee, who is hereby authorized to collect and receive the proceeds thereof, to give proper receipts and acquittances therefor and, subject to Section 2.06, to apply the same to the payment of the Secured Obligations, notwithstanding the fact that the same may not then be due and payable;

(h) any monies deposited with Mortgagee pursuant to the terms hereof or of any other Loan Document; and

(i) all proceeds, both cash and non-cash, of any and all of the foregoing;

TO HAVE AND TO HOLD the Mortgaged Property unto Mortgagee, its successors and assigns, forever free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois (which rights and benefits are hereby expressly released and waived),

PROVIDED, HOWEVER, that if Mortgagor shall pay, perform and discharge the Secured Obligations in full and the Loan Agreement is terminated, then this Mortgage and the estate hereby granted shall cease, terminate and become void.

AND, Mortgagor hereby agrees with Mortgagee as follows:

## ARTICLE I REPRESENTATIONS AND WARRANTIES

Mortgagor represents and warrants to Mortgagee that:

1.01. Title. Mortgagor (a) has good and marketable title to the Land and the Improvements and has good title to all Equipment and other property and rights comprising the Mortgaged Property, subject to no mortgage, lien, pledge, charge, security interest or other encumbrance or adverse claim of any nature except Permitted Encumbrances (as defined in this Section 1.01), and (b) has full power and lawful authority to grant, bargain, sell, convey, warrant, assign, transfer, mortgage, pledge, grant a security interest in, set over and confirm unto Mortgagee, and its successors and assigns, the Mortgaged Property as herein provided.



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Mortgagor will forever warrant and defend the title to the Mortgaged Property and the validity and first priority of the lien or estate, and the security interest, created hereby against the claims and demands of all persons whomsoever. As used herein the term "Permitted Encumbrances" means (i) the easements, rights of way and other exceptions set forth in Schedule B-I of the title policy insuring the lien of this Mortgage and (ii) any Impositions or Mechanics' Claims (both as defined in Section 2.07) which are not due and payable or are being contested in good faith at the time pursuant to and in compliance with the requirements of Section 2.07.

1.02. Hazardous Substances. The Mortgaged Property does not contain any hazardous wastes, hazardous substances, hazardous materials, toxic substances, hazardous air pollutants or toxic pollutants, as those terms are used in the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act and the Clean Water Act, or in any regulations promulgating pursuant thereto, or in any other applicable Law (collectively, "Hazardous Substances"). As used herein the term "Law" means any law, constitution, statute, treaty, regulation, rule, ordinance, order, injunction, writ, decree or award of any Official Body, including those relating to zoning, subdivision, building, safety, fire protection or environmental matters. As used herein the term "Official Body" means any government or political subdivision or any agency, authority, bureau, central bank, commission, department or instrumentality of either, or any court, tribunal, grand jury or arbitrator, in each case whether foreign or domestic.

## ARTICLE II AFFIRMATIVE COVENANTS

Mortgagor covenants to Mortgagee as follows:

2.01. Compliance with Laws; Etc. Mortgagor shall comply with all Laws and all private covenants which at any time are applicable to the Mortgaged Property or Mortgagor, and shall comply with the requirements of all policies of insurance required by this Mortgage and of the insurers under such policies. Mortgagor shall make any replacements, alterations or improvements to the Mortgaged Property as may be required by Law or such requirements even if unforeseen and/or extraordinary. Mortgagor shall have the right, after prior written notice to Mortgagee, to contest by appropriate legal proceedings diligently conducted in good faith, without cost or expense to Mortgagee, the validity or application of any Law which does not subject Mortgagee to any criminal or civil liability, and Mortgagor may delay compliance with such Law until final determination of such proceeding if compliance with such Law may legally be delayed until, and such

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proceedings shall conclusively operate to prevent the enforcement of such Law prior to, such final determination; provided, however, that, if in the judgment of Mortgagee any lien or charge against the Mortgaged Property would or might be incurred by reason of such delay, Mortgagor shall furnish to and maintain with Mortgagee security, at all times satisfactory to Mortgagee, to assure the discharge of such lien or charge. Mortgagor shall keep, or cause to be kept, in full force and effect all licenses, permits and governmental authorizations and agreements necessary or desirable for the ownership, construction, occupancy, operation, management or use of the Mortgaged Property. Mortgagor shall preserve and maintain unimpaired any and all easements, rights of way, appurtenances and other interests and rights constituting any portion of the Mortgaged Property.

2.02. Maintenance and Repair. Mortgagor shall not abandon or cause or permit any waste to the Improvements or the Equipment, shall maintain the Improvements and the Equipment in good repair, working order and condition, except for reasonable wear and use, and shall restore, replace or rebuild the Improvements and the Equipment or any part thereof now or hereafter damaged or destroyed by any casualty (whether or not insured against or insurable) or affected by any Condemnation with Improvements or Equipment of equivalent value and utility, whether or not the proceeds of insurance required hereunder or the award payable in respect of such Condemnation are sufficient for the purpose. All repairs, replacements, restorations, alterations and improvements to the Mortgaged Property required by Section 2.01 or this Section 2.02 or permitted by Sections 2.03 or 2.06 shall be promptly performed in a good and workmanlike manner in compliance with all applicable Laws, private covenants and insurance requirements, shall be equivalent in quality of construction and class to the original construction of the Improvements contemplated by the Loan Agreement (the "Project") and shall be subject to the terms and conditions set forth in Section 2.06(c) as if such repair, replacement, restoration, alteration or improvement were a restoration thereunder.

2.03. Alterations. After completion of construction of the Project, Mortgagor shall not permit the Improvements or the Equipment to be removed, demolished or materially altered; provided, however, that Mortgagor (i) shall make any replacements, alterations or improvements which are required by Law and (ii) may remove worn out Equipment if the same is concurrently replaced with Equipment of equivalent value and utility.

2.04. Insurance. Mortgagor shall maintain and keep in effect the following policies of insurance:

(a) during the course of construction of the Project or any other construction or repair of Improvements or Equipment on the Mortgaged Property, (i) builder's risk insurance (on a completed value, non-reporting basis) against

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"all risks of physical loss", including collapse and transit coverage, with deductibles not to exceed \$1,000, in non-reporting form, covering the total value of work performed and equipment, supplies and materials furnished in connection with such construction or repair of Improvements or Equipment, and (ii) worker's compensation, employer's liability and all other statutory forms of insurance now or hereafter required by Law covering all persons employed in connection with such construction or repair of the Improvements in such limits as may be required by Law or as Mortgagee may otherwise require;

(b) after completion of construction of the Project, policies of insurance against loss or damage to the Improvements and the Equipment by fire, lightning, windstorm, explosion, riot, riot attending a strike, civil commotion, damage from aircraft and vehicles, and smoke damage and loss or damage from such other hazards as are presently included in the so-called "fire and extended coverage" insurance and against vandalism and malicious mischief and such other insurable hazards, including flood, as, under good insurance practices, from time to time are insured against for improvements and equipment having similar functions and uses in the area where the Improvements and Equipment are located, in an amount which shall not be less than the greater of (i) 100% of the "full replacement cost" of the Improvements and the Equipment, without deduction for physical depreciation, or (ii) an amount sufficient to prevent Mortgagee and Mortgagor from becoming coinsurers within the terms of the applicable policies; the term "full replacement cost" shall mean the actual cost of replacing the Improvements and the Equipment, exclusive of the cost of excavations, foundations and footings below the lowest basement floor, and shall be determined from time to time at the request of Mortgagee (but not more frequently than once in any 24 calendar months) at the expense of Mortgagor, by an insurer or by an appraiser, engineer, architect or contractor designated by Mortgagor and approved by Mortgagee;

(c) if required by Mortgagee, insurance against loss or damage to the major components of the air conditioning and heating systems, flywheels, steam pipes, steam turbines, steam engines, steam boilers, other pressure vessels, high pressure piping and machinery and elevators and escalators, if any, as are installed in the Improvements, including insurance against physical damage to the Improvements and the Equipment arising out of an accident covered thereunder and against loss of occupancy or use arising from breakdown of any of the foregoing, in such amounts as are satisfactory to Mortgagee;

(d) comprehensive general liability insurance on an "occurrence basis" against claims for bodily injury, death

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or property damage occurring on or about the Mortgaged Property (including elevators and escalators, if any) and on or in the streets adjoining the same, to afford protection in a "single limit" of not less than \$3,000,000 in the event of bodily injury to or death of any number of persons or of damage to property arising out of one occurrence;

(e) if the Land or any part thereof is situate in an area designated by the Federal Emergency Management Agency (or any successor thereto) as an area of special flood hazard for purposes of the National Flood Insurance Program, such policies of flood insurance as Mortgagee shall request, so as to enable Mortgagee to be in compliance with all Laws with respect to flood insurance coverage for the Mortgaged Property from time to time applicable to Mortgagee;

(f) if requested by Mortgagee, business interruption insurance and insurance against loss of "rental value" for a period of twelve months, in such amounts as are satisfactory to Mortgagee; and

(g) such other insurance with respect to the Mortgaged Property in such amounts as may from time to time be required by Mortgagee against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height and type of buildings and improvements, their construction, location, use and occupancy.

All policies of insurance shall be subject to the approval of Mortgagee as to insurance companies, amounts, expiration dates, form and content and shall name Mortgagee as an additional insured. All policies of insurance maintained by Mortgagor pursuant to clauses (a) and (b) shall contain the "replacement cost endorsement". All policies of insurance covering risks of physical loss shall provide that losses thereunder shall be payable to Mortgagee pursuant to a standard first mortgagee endorsement, without contribution, substantially equivalent to the New York standard mortgagee endorsement. At least 30 days prior to the expiration of any policy of insurance, Mortgagor shall furnish Mortgagee with evidence satisfactory to Mortgagee of the payment of the premium for, and the reissuance of a policy continuing, such insurance as required by this Mortgage. All policies of insurance shall contain an endorsement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor which might otherwise give rise to a defense by the insurer to its payment for such loss and a waiver by the insurer of all rights of subrogation to any rights of Mortgagee and of all rights of setoff, counterclaim or deduction against the insureds. All policies of insurance shall also contain a provision to the effect that any cancellation of or amendment to such insurance, including any reduction in the scope or limits of coverage, shall not be

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effective as to Mortgagee without at least 30 days' prior written notice to Mortgagee. Mortgagor shall not take out separate insurance with respect to the Mortgaged Property concurrent in form or contributing in the event of loss with that required by this Mortgage unless the same shall contain a standard non-contributory lender's loss payable endorsement in favor of and in scope and form satisfactory to Mortgagee. Notwithstanding the foregoing, Mortgagee recognizes and agrees that Mortgagor does not have the right to receive insurance proceeds, if any, which may be payable with respect to the improvements located on the restaurant site and is unable to deliver to Mortgagee any evidence of insurance on such improvements.

2.05. Damage or Condemnation. In the event of any damage to or destruction of the Improvements or the Equipment or any part thereof as a result of any casualty ("Damage"), or in the event the Land, the Improvements or the Equipment or any part thereof are taken or damaged as the result of the exercise of the power of eminent domain or as the result of any other governmental action for which compensation shall be given by any Official Body ("Condemnation"), or if Mortgagor shall receive any notice or advice of any Condemnation proceedings, Mortgagor shall give prompt notice thereof to Mortgagee. Mortgagee shall have the right, and is hereby authorized and empowered and irrevocably appointed attorney-in-fact of Mortgagor, to settle, adjust or compromise any claims by any insureds for Damage under any policy or policies of insurance required to be maintained by this Mortgage, or any claims for awards or other compensation payable in connection with any Condemnation, except, so long as no Event of Default exists, those claims involving amounts of less than \$50,000.

2.06. Application of Insurance Proceeds and Condemnation Awards.

(a) Mortgagee Election. All proceeds of the insurance required to be maintained by this Mortgage (including proceeds of business interruption or loss of rental value insurance) payable in connection with any Damage, and all awards or other compensation payable in connection with any Condemnation, shall be deposited with Mortgagee, except that any such proceeds or awards or other compensation aggregating less than \$50,000 shall not be required to be so deposited. Such proceeds or awards or other compensation (after deducting therefrom all costs and expenses, including attorneys' fees, incurred by Mortgagee in connection with the collection thereof regardless of the particular nature thereof and whether incurred with or without suit) ("Net Proceeds"), shall be applied by Mortgagee at Mortgagee's option (x) to the payment of the Secured Obligations in such order as Mortgagee shall determine or (y) to the payment of the costs of restoring the Improvements and Equipment so damaged or taken to their value, utility and condition immediately prior to such Damage or Condemnation, including the payment of all principal and

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interest on the Secured Obligations ("Debt Service") as the same becomes due until completion of the restoration, (collectively, "Restoration Costs"); provided, however, that, with respect to any Damage or Condemnation occurring after completion of construction of the Project, at the request of Mortgagor Mortgagee shall elect to apply the Net Proceeds as set forth in clause (y) if no Event of Default or Potential Default (as defined in the Loan Agreement) shall have occurred and be continuing and if, in the sole judgment of Mortgagee, (i) the Improvements and Equipment so damaged can be restored substantially to the value, utility and condition thereof immediately prior to such Damage or Condemnation, (ii) the Net Proceeds deposited with Mortgagee, together with such supplemental amounts deposited by Mortgagor with Mortgagee for the purpose, shall be sufficient to pay all Restoration Costs, (iii) such restoration can be expected to be completed by the Maturity Date (as defined in the Note), (iv) in the case of a Condemnation, the Land taken will not materially adversely affect the value or utility of the Project even if the Improvements and Equipment can be restored and (v) such Damage or Condemnation and the time to complete such restoration shall not materially adversely affect the ability of Mortgagor to pay and perform its obligations under the Note and the other Loan Documents during such restoration or thereafter. Notwithstanding the foregoing, Mortgagee shall agree to apply the Net Proceeds to restoration if it receives written confirmation from the tenant under the theatre lease that it shall remain bound to the terms of its lease and it receives written confirmation from The Travelers Insurance Company that its commitment to provide financing for the improvements will remain in full force and effect until completion of the restoration period.

(b) Application to Restoration. If Mortgagee elects to apply the Net Proceeds to the cost of restoration, Mortgagor shall deposit with Mortgagee such additional amounts of money as may be necessary so that the Net Proceeds and such additional monies (collectively, "Restoration Funds") will be sufficient, in the reasonable judgment of Mortgagee, to pay all Restoration Costs and all Debt Service during such restoration. Such Restoration Funds will be advanced by Mortgagee from time to time as the restoration work progresses upon the written request of Mortgagor subject to compliance by Mortgagor with such reasonable requirements and conditions as Mortgagee shall impose, such requirements and conditions to be substantially equivalent to those imposed by Mortgagee for advances of loan proceeds under the Loan Agreement and to include those terms and conditions set forth in Section 2.06(c). Mortgagee shall not be required to apply Restoration Funds as aforesaid unless it reasonably determines that the amount thereof remaining after payment of the amount requested will be sufficient to pay the Restoration Costs in full, and Mortgagor shall promptly deposit with Mortgagee the amount of any deficiency, to be held and disbursed by Mortgagee as Restoration Funds in accordance with the provisions of this Section 2.06. Upon completion of such restoration to the satisfaction of

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Mortgagee and the payment of the Restoration Costs in full, the balance of any Restoration Funds not required to be disbursed shall (i) in the case of a Damage, be disbursed to Mortgagor or as Mortgagor may direct and (ii) in the case of a Condemnation, be applied to the payment of the Secured Obligations in such order as Mortgagee may determine until the same have been paid in full and then to Mortgagor or as Mortgagor may direct.

(c) Permits; Plans; Contracts. All restoration work following any Damage or Condemnation pursuant to this Mortgage shall be subject to the following terms and conditions:

(i) no work shall be undertaken unless Mortgagor shall have procured and paid for all permits, approvals and authorizations of all Official Bodies required in connection with all of the work; and

(ii) all work involving estimated Restoration Costs of more than \$25,000 (exclusive of Debt Service) (x) shall be designed, constructed and completed in accordance with detailed plans and specifications and cost estimates acceptable to Mortgagee and prepared by an architect or engineer selected by Mortgagor and reasonably satisfactory to Mortgagee and (y) shall be performed pursuant to fixed price construction contracts which are secured by payment and performance bonds in the amount of such contracts, such contracts and bonds to be in form and substance, and with contractors and sureties, reasonably satisfactory to Mortgagee and to be executed and delivered prior to the commencement of any of the work.

(d) Payment of Deficiency. If (i) Mortgagee elects to apply the Net Proceeds to the payment of the Secured Obligations pursuant to Section 2.06(a), (ii) in the reasonable judgment of Mortgagee the Mortgaged Property cannot be restored substantially to the value, utility and condition thereof immediately prior to such Damage or Condemnation or such restoration cannot be expected to be completed by the Maturity Date and (iii) the Net Proceeds are not sufficient to pay the Secured Obligations in full, Mortgagor shall promptly pay the deficiency.

2.07. Taxes and Impositions; Mechanics' Claims. Mortgagor shall pay, before any fine, penalty, interest or cost attaches thereto, all taxes and assessments, general and special, all water and sewer rents and all governmental charges and levies of any kind or nature whatsoever, which are now or hereafter assessed or imposed upon the Mortgaged Property or Mortgagor or become due and payable from Mortgagor or create a lien upon the Mortgaged Property (all such taxes, assessments, rents, charges and levies being herein collectively called "Impositions"), as well as all claims for labor, materials or services which, if unpaid, might become a lien thereon (herein collectively called "Mechanics' Claims"), and shall furnish to Mortgagee, as soon as

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reasonably possible, official receipts of the appropriate taxing or other authority, or other proof satisfactory to Mortgagee, evidencing the payment of all Impositions; provided, however, that if by law any Imposition is payable, or may at the option of the taxpayer be paid, in installments, Mortgagor may pay the same, or cause the same to be paid, together with any accrued interest on the unpaid balance thereof, in instalments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof; and provided, further, that, if Mortgagor (a) contests the validity or amount of any Imposition or Mechanic's Claim in good faith and by appropriate proceedings which operate to prevent any execution on any portion of the Mortgaged Property, (b) deposits and maintains with Mortgagee a bond or other security satisfactory to Mortgagee in such amount as Mortgagee shall require to assure the discharge thereof, (c) furnishes to Mortgagee an endorsement to Mortgagee's title insurance policy insuring over such Imposition or Mechanics' Claim and (d) thereafter diligently proceeds to cause such Imposition or Mechanics' Claim to be removed, paid or discharged of record, Mortgagor may defer payment thereof during the pendency of such contest.

2.08. Tax and Insurance Escrow. If requested by Mortgagee, Mortgagor shall pay to Mortgagee on the first day of each calendar month a sum equal to one-twelfth (1/12th) of the real estate taxes on the Mortgaged Property and premiums for insurance required hereby so as to enable Mortgagee to pay the same at least thirty days before they become due. Amounts so paid shall not be trust funds but may at the option of Mortgagee be commingled with general funds of Mortgagee. No interest shall be paid on such amounts. If an Event of Default shall occur, Mortgagee shall have the right to apply any amounts paid to Mortgagee under this Section 2.08 against all or any part of the Secured Obligations. If such real estate taxes and insurance premiums shall exceed the amounts paid into escrow under this Section 2.08, Mortgagor shall on demand pay the deficiency. Mortgagor shall furnish to Mortgagee tax and insurance bills in sufficient time to enable Mortgagee to pay such taxes and premiums, before interest and penalties accrue thereon.

2.09. Financial Statements. Mortgagor shall furnish or caused to be furnished to Mortgagee:

(a) for each of Partnership and the Guarantors (as defined in the Loan Agreement), within 120 days after the end of each of its fiscal years, a balance sheet as of the end of such fiscal year and a statement of income and retained earnings for such fiscal year, setting forth in comparative form in the balance sheet and in the statement of income and retained earnings the corresponding figures for the preceding fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles consistently applied and certified by a general partner of Partnership as



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to the Partnership return and by independent public accountants of recognized standing selected by each Guarantor and satisfactory to Mortgagee as to the Guarantors' returns;

(b) for each of Partnership and the Guarantors, within 45 days after the end of each of the first three quarters of each of its fiscal years, a balance sheet and income statement, as at the end of such quarter, all in reasonable detail and prepared in accordance with generally accepted accounting principles consistently applied, subject, however, to year-end audit adjustments, and certified by the general partner of Partnership or such Guarantor, as the case may be;

(c) on or before the tenth day of each calendar month upon completion of construction, a monthly financial statement covering the operation of the Mortgaged Property for the preceding calendar month, and setting forth in such detail as Mortgagee shall reasonably request, the status of leasing, the income, expenses and cash flow and other financial information relating to the Mortgaged Property, which monthly financial statements shall be certified by the general partner of Partnership; and

(d) with reasonable promptness furnish to Mortgagee such other financial and other information respecting the financial condition, business or operations of Partnership or any Guarantor as Mortgagee may from time to time reasonably request.

## 2.10. Security Interest.

(a) UCC Security Interest. This Mortgage constitutes both a mortgage and a "security agreement" within the meaning of the Uniform Commercial Code of the applicable jurisdiction (the "UCC"), and the Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor by executing and delivering this Mortgage has granted to Mortgagee, as security for the Secured Obligations, a security interest in and to those portions of the Mortgaged Property in which a security interest can be granted under the UCC. Portions of the Mortgaged Property are or are to become fixtures as defined in the UCC. This Mortgage constitutes and is effective as a fixture filing as provided in Section 9402 of the UCC.

(b) Locations. Mortgagor shall maintain and keep the Equipment on the Land; shall maintain and keep its principal place of business and its chief executive office at Chicago, Illinois and at no other location without thirty days' prior written notice to Mortgagee; and shall maintain and keep its records concerning the Mortgaged Property at the Improvements and at no other location without thirty days' prior written notice to Mortgagee.

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2.11. Visitation. Mortgagor shall permit such persons as Mortgagee may designate to visit and inspect the Mortgaged Property, to examine the books, records and documents relating to the Mortgaged Property and take copies and extracts therefrom and to discuss the affairs of Mortgagor relating thereto with the officers, employees and independent accountants of Mortgagor at such times and as often as Mortgagee may reasonably request. Mortgagor hereby authorizes such officers, employees and independent accountants to discuss with Mortgagee such affairs of Mortgagor.

2.12. Litigation Affecting Mortgaged Property. Mortgagor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee, and shall pay within a reasonable time after demand therefor all costs and expenses, including costs of evidence of title and attorneys' fees, in any such action or proceeding in which Mortgagee may appear.

2.13 Indemnification. Mortgagee shall have no obligation or liability by reason of this Mortgage (or the liens or security interests in the Mortgaged Property granted hereby) or arising out of the Mortgaged Property, nor shall Mortgagee be required or obligated in any manner to perform or fulfill any obligations of Mortgagor with respect to the Mortgaged Property. Mortgagor hereby agrees to indemnify and defend Mortgagee against, and hold Mortgagee harmless from, (i) any and all liability, loss or damage which Mortgagee may or might incur by reason of this Mortgage (or the liens or security interests in the Mortgaged Property granted hereby) or arising from events which involve the Mortgaged Property, including any liability, loss or damage arising from or related to Hazardous Substances, and (ii) any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligation on its part to perform or discharge any obligation with respect to the Mortgaged Property.

2.14. Actions by Mortgagee to Preserve Mortgaged Property. If Mortgagor shall fail to (a) effect, maintain and keep in force the insurance required under the provisions of Section 2.04, (b) make the payments required by Section 2.07 or (c) pay, perform or observe any of the other obligations required by this Mortgage or any other Loan Document to be paid, performed or observed by Mortgagor, then Mortgagee may effect, maintain, keep in force, pay, perform or observe the same. In connection therewith, Mortgagee shall have the right, but not the obligation, (i) to enter upon and take possession of the Mortgaged Property; (ii) to make such additions, alterations, repairs and improvements to the Mortgaged Property as Mortgagee may consider necessary or proper to keep the same in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the security hereof or thereof or the rights or

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powers of Mortgagee hereunder or thereunder; (iv) to contest or compromise any lien, encumbrance or charge which in the judgment of Mortgagee may affect the security of this Mortgage or any other Loan Document, or to discharge the same, either by paying the amount claimed to be due or depositing in court a bond for the amount claimed or otherwise giving security for such claim, or in such other manner as is or may be prescribed by law; and (v) in exercising such powers, to pay necessary expenses including the fees and expenses of attorneys and all necessary or desirable consultants. All sums so expended by Mortgagee or expended to sustain the lien or estate or security interest created by this Mortgage or any other Loan Document or the priority hereof or thereof, or to protect or enforce any of the rights of Mortgagee under the terms of this Mortgage or any other Loan Document, or to recover or enforce any of the Secured Obligations or otherwise to secure the performance of any obligation of Mortgagor under this Mortgage or any other Loan Document, shall be paid by Mortgagor within five days after demand by Mortgagee with interest at a rate per annum (the "Default Rate") equal to 5% above the Prime Rate (as defined in the Note) until paid. In any action or proceeding to foreclose this Mortgage, or to recover, collect or enforce the Secured Obligations, the provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

2.15. Estoppel Certificates. Mortgagor, within five days after notice from Mortgagee, shall furnish to Mortgagee a statement stating the amount of the Secured Obligations and stating whether any offsets or defenses exist against the Secured Obligations.

## ARTICLE III NEGATIVE COVENANTS

Mortgagor covenants to Mortgagee as follows:

3.01. Liens; Leases. Mortgagor shall not create, permit to accrue or suffer to exist any assignment, mortgage, lien, security interest, pledge, conditional sale or other title retention agreement, encumbrance or charge of, in, to or upon the Mortgaged Property, other than Permitted Encumbrances, without the prior written consent of Mortgagee. Mortgagor shall not, without the prior written consent of Mortgagee, lease (as lessee) any of the Equipment or Improvements.

3.02. Modifications to Property Restrictions. Mortgagor shall not initiate, join in or consent to any change in any private covenant, zoning ordinance or other public or private restriction which would detract from or limit the value or utility of the Mortgaged Property.

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3.03. Hazardous Substances. Mortgagor shall not cause or permit the deposit or creation of, or permit the existence of, any Hazardous Substances on the Mortgaged Property.

3.04. Dissolution; Change of Business. Neither Mortgagor nor Partnership shall dissolve nor sell, transfer or otherwise dispose of all or a substantial portion of its assets. Partnership shall continue to engage in its business substantially as currently conducted and operated and shall not engage in any other business.

3.05. Indebtedness. Partnership shall not at any time create, incur, assume or suffer to exist (as principal or as guarantor or other surety) any obligation for borrowed money, deferred purchase price or lease cost of property or any other indebtedness, except indebtedness evidenced by the Note and current accounts payable arising out of transactions (other than borrowings) in the ordinary course of business.

3.06. Partnership Interests. The Partnership shall not dissolve, merge or consolidate with any other entity nor shall Partnership permit the transfer of Partnership interests in the Partnership or in the general partner of Partnership. Mortgagor shall not permit the transfer of the beneficial interest in Mortgagor.

## ARTICLE IV EVENTS OF DEFAULT, REMEDIES

4.01. Events of Default. An Event of Default shall mean the occurrence or existence of one or more of the following events or conditions (whatever the reason for such Event of Default and whether voluntary, involuntary or effected by operation of law):

(a) Mortgagor shall fail to pay when due principal of the Note; or

(b) Mortgagor shall fail to pay when due interest on the Note or any other amount due hereunder or under the Note or any other Loan Document and such failure shall have continued for a period of ten days; or

(c) Any representation or warranty made by Mortgagor under this Mortgage or any statement made by Mortgagor in any financial statement, certificate, report, exhibit or document furnished by Mortgagor to Mortgagee pursuant to this Mortgage, the Loan Agreement or any other Loan Document shall prove to have been false or misleading in any material respect as of the time when made (including any omission of material information necessary to make such representation, warranty or statement not misleading); or

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(d) Mortgagor shall default in the performance or observance of any covenant contained in Sections 2.03 or 2.04 or in Article III; or

(e) Mortgagor shall default in the performance or observance of any other covenant, agreement or duty under this Mortgage and such default shall have continued for a period of thirty days after written notice thereof to Mortgagor, provided that, if such default is non-monetary and cannot with due diligence be cured within such thirty (30) day period, Mortgagor shall have such additional time (not to exceed ninety (90) days from the date of such notice) as is necessary to cure the default if Mortgagor promptly commences such cure and, diligently proceeds with such cure; or

(f) Mortgagor, Partnership or any Guarantor shall default in the performance or observance of any covenant, agreement or duty under the Note or any other Loan Document beyond any period of grace with respect thereto; or

(g) An Event of Default set forth in the Loan Agreement or any other Loan Document shall occur; or

(h) Partnership or any Guarantor (i) shall default (as principal or as guarantor or other surety) in any payment of any obligation (or set of related obligations) in respect of borrowed money, deferred purchase price or lease cost of property or any other indebtedness in excess of \$100,000 in aggregate amount beyond any period of grace with respect thereto or, if such obligation or obligations is or are payable or repayable on demand, shall fail to pay or repay such obligation or obligations when demanded or (ii) shall default in the observance of any covenant, term or condition contained in any agreement or instrument by which such obligation or obligations is or are created, secured or evidenced if the effect of such default is to cause, or to permit the holder or holders of such obligation or obligations (or a trustee or agent on behalf of such holder or holders) to cause, all or part of such obligation or obligations to become due before its or their otherwise stated maturity;

(i) One or more judgments for the payment of money shall have been entered against Mortgagor, Partnership or any Guarantor, which judgment or judgments exceed \$100,000 in the aggregate, and such judgment or judgments shall have remained undischarged and unstayed for a period of thirty consecutive days; or

(j) A writ or warrant of attachment, garnishment, execution, distraint or similar process shall have been issued against Mortgagor or any Guarantor or any of their

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respective properties which shall have remained undischarged and unstayed for a period of thirty consecutive days; or

(k) A material adverse change in the business, operations or condition, financial or otherwise, of Mortgagor, Partnership or any Guarantor shall have occurred; or

(l) Mortgagor shall sell or otherwise convey or transfer the Mortgaged Property or any part thereof, or any partnership interest in Partnership (including any interest in the profits and/or losses of Partnership) or the beneficial interest of Mortgagor shall have been transferred, pledged, levied upon or encumbered; or

(m) A proceeding shall have been instituted in respect of Partnership or any Guarantor

(i) seeking to have an order for relief entered in respect of Partnership or such Guarantor, or seeking a declaration or entailing a finding that Partnership or such Guarantor is insolvent or a similar declaration or finding, or seeking dissolution, winding-up, charter revocation or forfeiture, liquidation, reorganization, arrangement, adjustment, composition or other similar relief with respect to Partnership or such Guarantor, its assets or its debts under any law relating to bankruptcy, insolvency, relief of debtors or protection of creditors, termination of legal entities or any other similar law now or hereafter in effect, or

(ii) seeking appointment of a receiver, trustee, custodian, liquidator, assignee, sequestrator or other similar official for Partnership or such Guarantor or for all or any substantial part of its property,

and such proceeding shall result in the entry, making or grant of any such order for relief, declaration, finding, relief or appointment, or such proceeding shall remain undischarged and unstayed for a period of thirty consecutive days; or

(n) Partnership or any Guarantor shall become insolvent, shall become generally unable to pay its debts as they become due, shall voluntarily suspend transaction of its business, shall make a general assignment for the benefit of creditors, shall institute a proceeding described in Section 4.01(m)(i) or shall consent to any such order for relief, declaration, finding or relief described therein, shall institute a proceeding described in Section 4.01(m)(ii) or shall consent to any such appointment or to the taking of possession by any such official of all or any substantial

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part of its property whether or not any such proceeding is instituted, shall dissolve, windup or liquidate itself or any substantial part of its property, or shall take any action in furtherance of any of the foregoing.

#### 4.02. Remedies.

(a) Primary Remedies. If an Event of Default shall occur, Mortgagee may (x) by notice to Mortgagor, declare the Secured Obligations immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived; provided, however, that, in the case of an Event of Default specified in subsections (m) or (n) of Section 4.01, the Secured Obligations shall automatically become due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived; and/or (y) exercise any other right, power or remedy available to it at law or in equity, hereunder or under any other Loan Document without demand, protest or notice of any kind, all of which are hereby expressly waived, except such as is expressly required hereby or by such other Loan Document. Without limiting the generality of the foregoing, Mortgagee may:

(i) enter and take possession of the Mortgaged Property or any part thereof, exclude Mortgagor and all persons claiming under Mortgagor wholly or partly therefrom, and operate, use, manage and control the same, or cause the same to be operated by a person selected by Mortgagee, either in the name of Mortgagor or otherwise, and upon such entry, from time to time, at the expense of Mortgagor and of the Mortgaged Property, make all such repairs, replacements, alterations, additions or improvements thereto as Mortgagee may deem proper, and collect and receive the rents, revenues, issues, profits, royalties, income and benefits thereof and apply the same to the payment of all expense, which Mortgagee may be authorized to incur under the provisions of this Mortgage and applicable law, the remainder to be applied to the payment, performance and discharge of the Secured Obligations in such order as Mortgagee may determine until the same have been paid in full;

(ii) institute an action for the foreclosure of this Mortgage and the sale of the Mortgaged Property pursuant to the judgment or decree of a court of competent jurisdiction;

(iii) sell the Mortgaged Property to the highest bidder or bidders at public auction at a sale or sales held at such place or places and time or times and upon such notice and otherwise in such manner as may be required by law, or in the absence of any such requirement, as Mortgagee may deem appropriate, and from time to time adjourn such sale by announcement at the time and place specified for such sale

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or for such adjourned sale or sales without further notice except such as may be required by law;

(iv) take all steps to protect and enforce the rights of Mortgagee under this Mortgage by suit for specific performance of any covenant herein contained, or in aid of the execution of any power herein granted or for the enforcement of any other rights; and/or

(v) exercise any or all of the rights and remedies available to a secured party under the UCC, including the right to (A) enter the Mortgaged Property and take possession of the Equipment without demand or notice and without prior judicial hearing or legal proceedings, which Mortgagor hereby expressly waives, (B) require Mortgagor to assemble the Equipment, or any portion thereof, and make it available to Mortgagee at a place or places designated by Mortgagee and reasonably convenient to both parties and (C) sell all or any portion of the Equipment at public or private sale, without prior notice to Mortgagor except as otherwise required by law (and if notice is required by law, after ten days' prior written notice), at such place or places and at such time or times and in such manner and upon such terms, whether for cash or on credit, as Mortgagee in its sole discretion may determine. As to any property subject to Article 9 of the UCC included in the Mortgaged Property, Mortgagee may proceed under the UCC or proceed as to both real and personal property in accordance with the provisions of this Mortgage and the rights and remedies that Mortgagee may have at law or in equity, in respect of real property, and treat both the real and personal property included in the Mortgaged Property as one parcel or package of security. Mortgagor shall have the burden of proving that any sale pursuant to this Section 4.02(a) or pursuant to the UCC was conducted in a commercially unreasonable manner.

(b) Receiver. In any action to foreclose this Mortgage, Mortgagee shall be entitled as a matter of right to the appointment of a receiver of the Mortgaged Property and the rents, revenues, issues, profits, royalties, income and benefits thereof, without notice or demand, and without regard to the adequacy of the security for the Secured Obligations or the solvency of Mortgagor.

(c) Environmental Site Assessments. If an Event of Default shall occur, Mortgagor shall permit such persons as Mortgagee may designate ("Site Reviewers") to visit the Mortgaged Property and perform environmental site investigations and assessments ("Site Assessments") on the Mortgaged Property for the purpose of determining whether there exists on the Mortgaged Property any environmental condition which could result in any liability, cost or expense to the owner or occupier of the Mortgaged Property relating to Hazardous Substances. Such Site

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Assessments may include both above and below the ground testing for environmental damage or the presence of Hazardous Substances on the Mortgaged Property and such other tests on the Mortgaged Property as may be necessary to conduct the Site Assessments in the opinion of the Site Reviewers. Mortgagor will supply to the Site Reviewers such historical and operational information regarding the Mortgaged Property as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. The cost of performing all Site Assessments shall be paid by Mortgagor within five days after demand by Mortgagee with interest at the Default Rate until paid.

(d) Right of Set-Off. If an Event of Default shall occur, Mortgagee and the holder of any participation in the Note shall have the right, in addition to all other rights and remedies available to it, to set-off against and to appropriate and apply to the unpaid balance of the Note and all other obligations of Mortgagor hereunder or under any other Loan Document any debt owing to, and any other funds held in any manner for the account of, Mortgagor by Mortgagee or such holder, including all funds in all deposit accounts (general or special) now or hereafter maintained by Mortgagor with Mortgagee or such holder. Such right shall exist whether or not Mortgagee or any such holder shall have made any demand under the Note or any such participation or any other Loan Document and whether or not the Note or such participation or such other obligations are matured or unmatured. Mortgagor hereby confirms the foregoing arrangements and each such holder's and the Mortgagee's right of banker's lien and set-off and nothing in this Mortgage or any other Loan Document shall be deemed any waiver or prohibition of any such holder's or of the Mortgagee's right of banker's lien or set-off.

(e) Sales by Parcels. In any sale made under or by virtue of this Mortgage or pursuant to any judgment or decree of court, the Mortgaged Property may be sold in one or more parts or parcels or as an entirety and in such order as Mortgagee may elect, without regard to the right of Mortgagor, or any person claiming under it, to the marshalling of assets.

(f) Effect of Sale. The purchaser at any sale made under or by virtue of this Mortgage or pursuant to any judgment or decree of court shall take title to the Mortgaged Property or the part thereof so sold free and discharged of the estate of Mortgagor therein, the purchaser being hereby discharged from all liability to see to the application of the purchase money. Any person, including Mortgagee, may purchase at any such sale. Mortgagee is hereby irrevocably appointed the attorney-in-fact of Mortgagor in its name and stead to make all appropriate transfers and deliveries of the Mortgaged Property or any portions thereof so sold and, for this purpose, Mortgagee may execute all appropriate instruments of transfer, and may substitute one or

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more persons with like power, Mortgagor hereby ratifying and confirming all that its said attorneys or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, Mortgagor shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be executed and delivered, to Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Mortgagee, for the purpose, and as may be designated, in such request. Any sale or sales made under or by virtue of this Mortgage, to the extent not prohibited by law, shall operate to divest all the estate, right, title, interest, property, claim and demand whatsoever, whether at law or in equity, of Mortgagor in, to and under the Mortgaged Property, or any portions thereof so sold, and shall be a perpetual bar both at law and in equity against Mortgagor, its successors and assigns, and against any and all persons claiming or who may claim the same, or any part thereof, by, through or under Mortgagor, or its successors or assigns. The powers and agency herein granted are coupled with an interest and are irrevocable.

(g) Eviction of Mortgagor After Sale. If Mortgagor fails or refuses to surrender possession of the Mortgaged Property after any sale thereof, Mortgagor shall be deemed a tenant at sufferance, subject to eviction by means of forcible entry and detainer proceedings, provided that this remedy is not exclusive or in derogation of any other right or remedy available to Mortgagee or any purchaser of the Mortgaged Property under any provision of this Mortgage or pursuant to any judgment or decree of court.

(h) Insurance Policies. In the event of a foreclosure sale pursuant to this Mortgage or other transfer of title or assignment of the Mortgaged Property in extinguishment, in whole or in part, of the Secured Obligations, all right, title and interest of Mortgagor in and to all policies of insurance required under the provisions of Section 2.04 shall inure to the benefit of and pass to the successor in interest of Mortgagor or the purchaser or grantee of the Mortgaged Property or any part thereof so transferred.

4.03. Application of Proceeds. The proceeds of any sale made either under the power of sale hereby given or under a judgment, order or decree made in any action to foreclose or to enforce this Mortgage, shall be applied:

(a) first to the payment of (i) all costs and expenses of such sale, including reasonable attorneys' fees, appraisers' fees and costs of procuring title searches, title insurance policies and similar items and (ii) all charges, expenses and advances incurred or made by Mortgagee in order to protect the lien or estate created by this Mortgage or the security afforded hereby including any expenses of entering, taking possession of and operating the Mortgaged Property;

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(b) then to the payment of any other Secured Obligations in such order as Mortgagee may determine until the same have been paid in full; and

(c) any balance thereof shall be paid to Mortgagor, or to whosoever shall be legally entitled thereto, or as a court of competent jurisdiction may direct.

4.04. Right to Sue Without Prejudice. If an Event of Default shall occur, Mortgagee shall have the right from time to time to cause a sale of the Mortgaged Property under the provisions of this Mortgage or to sue for any sums required to be paid by Mortgagor under the terms of this Mortgage as the same respectively become due, without regard to whether or not the Secured Obligations shall be due and without prejudice to the right of Mortgagee thereafter to cause any such sale or to bring any action or proceeding of foreclosure or otherwise, or to take other action, in respect of any Event of Default existing at the time such earlier action or proceeding was commenced.

4.05. Power to Modify Documents. Mortgagee may at any time or from time to time renew or extend this Mortgage or any other Loan Document or amend or modify the same in any way, or waive any of the terms, covenants or conditions hereof or thereof in whole or in part, and may release any portion of the Mortgaged Property or any other security, and grant such extensions and indulgences in relation to the Secured Obligations as Mortgagee may determine without the consent of any junior lienor or encumbrancer and without any obligation to give notice of any kind thereto and without in any manner affecting the priority of the lien or security interest of this Mortgage on any part of the Mortgaged Property.

#### 4.06. Remedies Cumulative.

(a) Generally. No right or remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other right or remedy, and each and every such right and remedy shall be cumulative and in addition to any other right or remedy of Mortgagee under the Loan Documents or this Mortgage, or at law or in equity. The failure of Mortgagee to insist at any time upon the strict observance or performance of any of the provisions of this Mortgage, or to exercise any right or remedy provided for herein or in the Loan Documents, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof. Every right and remedy given by this Mortgage or the Loan Documents to Mortgagee, or to which Mortgagee may otherwise be entitled, may be exercised from time to time and as often as may be deemed expedient by Mortgagee, and no warrant shall be exhausted by the exercise thereof. Mortgagee may pursue inconsistent remedies.

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(b) Other Security. Mortgagee shall be entitled to enforce payment and performance of any Secured Obligations and to exercise all rights and powers under the Loan Documents or this Mortgage, or at law or in equity, notwithstanding that such Secured Obligations may now or hereafter be otherwise secured. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee in such order and manner as Mortgagee in its sole discretion may determine.

4.07. Waiver of Stay, Extension, Moratorium Laws; Equity of Redemption. Mortgagor shall not at any time (a) insist upon, plead or in any manner whatever claim or take any benefit or advantage of any applicable present or future stay, extension or moratorium Law or (b) claim, take or insist upon any benefit or advantage of any present or future Law providing for the valuation or appraisal of the Mortgaged Property prior to any sale or sales thereof which may be made under or by virtue of the provisions of Section 4.02; and Mortgagor hereby waives all benefit or advantage of any such Law or Laws. Mortgagor, for itself and all who may claim under it, hereby waives any and all rights and equities of redemption from sale under the power of sale created hereunder or from sale under any order or decree of foreclosure of this Mortgage and all notice or notices of seizure, and all right to have the Mortgaged Property marshalled upon any foreclosure hereof. Mortgagee shall not be obligated to pursue or exhaust its rights or remedies as against any part of the Mortgaged Property before proceeding against any other part thereof and Mortgagor hereby waives any right or claim of right to have Mortgagor proceed in any particular order. Mortgagor hereby waives and releases all errors, defects and imperfections in any proceedings instituted by Mortgagee under this Mortgage.

## ARTICLE V MISCELLANEOUS

5.01. Future Advances. All advances and indebtedness arising and accruing from time to time under the Loan Agreement shall be secured hereby to the same extent as though the Loan Agreement were fully incorporated in this Mortgage. Under the Loan Agreement advances shall be made and indebtedness shall be incurred from time to time hereafter, but each such advance or indebtedness shall be secured hereby as if made on the date hereof.

5.02. Changes in Tax Law. In the event of the passage after the date of this Mortgage of any Law deducting from the value of the Mortgaged Property, for the purpose of taxation, any lien thereon, or changing in any way the Laws now in force for the taxation of mortgages, or debts secured thereby, for state or



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local purposes, or the manner of the operation of any such taxes so as to affect the interest of Mortgagee, then and in such event, Mortgagor shall bear and pay the full amount of such taxes, provided that if for any reason payment by Mortgagor of any such new or additional taxes would be unlawful (including under the laws of usury) Mortgagee may either declare the whole sum secured by this Mortgage, with interest thereon, to be immediately due and payable, or pay that amount or portion of such taxes as would be unlawful to require Mortgagor to pay, in which event Mortgagor shall concurrently therewith pay the balance of said taxes.

## 5.03. Further Assurances.

(a) Generally. From time to time upon the request of Mortgagee, Mortgagor shall promptly and duly execute, acknowledge and deliver any and all such further instruments and documents as Mortgagee may deem necessary or desirable to confirm this Mortgage, to carry out the purpose and intent hereof, or to enable Mortgagee to enforce any of its rights hereunder.

(b) Filing. Mortgagor immediately upon the execution and delivery of this Mortgage, and thereafter from time to time, shall cause this Mortgage, any supplements hereto, any financing statements and each instrument of further assurance to be filed, registered or recorded and refiled, reregistered or rerecorded in such manner and in such places as may be required by any present or future Law in order to publish notice of and perfect the lien and security interest or estate created by this Mortgage on or in the Mortgaged Property, and shall pay all fees and costs in connection therewith.

5.04. Amendments, Waivers, Etc. This Mortgage cannot be amended, modified, waived, changed, discharged or terminated except by an instrument in writing signed by the party against whom enforcement of such amendment, modification, waiver, change, discharge or termination is sought.

5.05. No Implied Waiver. No course of dealing and no delay or failure of Mortgagee in exercising any right, power or privilege under this Mortgage, the Note or any other Loan Document shall affect any other or future exercise thereof or exercise of any other right, power or privilege; nor shall any single or partial exercise of any such right, power or privilege or any abandonment or discontinuance of steps to enforce such a right, power or privilege preclude any further exercise thereof or of any other right, power or privilege.

5.06. Notices. All notices, requests, demands, directions and other communications (collectively "notices") under the provisions of this Mortgage or the Note shall be in writing (including telexed communication) unless otherwise expressly permitted hereunder or thereunder and shall be sent by first-class or first-class express mail, or by telex with confirmation in

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writing mailed first-class, in all cases with charges prepaid, and any such properly given notice shall be effective when received. All notices shall be sent to the applicable party at its address stated on the first page hereof or in accordance with the last unrevoked written direction from such party to the other party hereto.

5.07. Expenses; Taxes; Attorneys' Fees. Mortgagor agrees to pay or cause to be paid and to save Mortgagee harmless against liability for the payment of all reasonable out-of-pocket expenses, including fees and expenses of counsel for Mortgagee, incurred by Mortgagee from time to time (a) arising in connection with the preparation, execution, delivery and performance of this Mortgage, the Note and the other Loan Documents, (b) relating to any requested amendments, waivers or consents to this Mortgage, the Note or any other Loan Document and (c) arising in connection with the Bank's enforcement or preservation of rights under this Mortgage, the Note or any other Loan Document, including such expenses as may be incurred by Mortgagee in the collection of the Note or the realization of security given for the Note. Mortgagor agrees to pay all stamp, document, transfer, recording or filing taxes or fees and similar impositions now or hereafter determined by Mortgagee to be payable in connection with this Mortgage, the Note or any other Loan Documents, and Mortgagor agrees to save Mortgagee harmless from and against any and all present or future claims, liabilities or losses with respect to or resulting from any omission to pay or delay in paying any such taxes, fees or impositions. Mortgagor agrees to pay and to save Mortgagee harmless against liability for the payment of all reasonable out-of-pocket expenses incurred by Mortgagee in connection with its review of any repair, replacement, alteration, improvement or restoration to the Mortgaged Property in connection with the requirements of Sections 2.02, 2.03 and 2.06, including the fees and expenses of counsel for Mortgagee and of any architect engaged by Mortgagee to review plans and specifications, inspect work or provide advice with respect to determinations to be made by Mortgagee in connection therewith. In the event of termination adversely to Mortgagor of any action at law or suit in equity in relation to this Mortgage, the Note or any other Loan Document, Mortgagor will pay, in addition to all other sums which Mortgagor may be required to pay, a reasonable sum for attorneys' fees incurred by Mortgagee in connection with such action or suit. All amounts payable by Mortgagor under this Section 5.07 shall be paid within five days after demand by Mortgagee with interest at the Default Rate until paid.

5.08. Assignment of Leases. Concurrently herewith, Mortgagor has executed and delivered to Mortgagee by separate instrument an Assignment of Leases and Rents dated as of the date hereof and to be recorded, pursuant to which Mortgagor has assigned to Mortgagee all of its right, title and interest in and to all leases of space in the Improvements, including all rents from such leases, all as therein more specifically set forth,

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which Assignment of Leases and Rents is incorporated herein by reference as fully and with the same effect as if set forth herein at length.

5.09. Jurisdiction; Etc. Mortgagor irrevocably (a) agrees that Mortgagee, may bring suit, action or other legal proceedings arising out of this Mortgage (other than those brought for the foreclosure or other realization on the real property security granted hereby), the Note or any other Loan Document, or the transactions contemplated hereby or thereby, in the courts of the Commonwealth of Pennsylvania in Allegheny County, Pennsylvania or the courts of the United States for the Western District of Pennsylvania; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; (c) waives any objection which Mortgagor may have to the laying of the venue of any such suit, action or proceeding in any of such courts; and (d) waives any right it may have to a jury trial in connection with any suit, action or proceeding arising out of this Mortgage, the Note or any other Loan Document or the transactions contemplated hereby or thereby.

5.10. Interpretation. Unless the context otherwise requires, (a) the term "person" means an individual, corporation, partnership, trust, unincorporated association, joint venture, joint-stock company, government (including political subdivisions), governmental authority or agency, or any other entity, (b) any reference in this Mortgage to "Mortgagor," "Mortgagee" or any other entity shall include its successors and assigns, (c) any reference to an Article or Section shall refer to the specified Article or Section of this Mortgage, (d) words importing the singular number include the plural number, and vice versa, (e) the terms "hereof", "hereby", "hereto", "hereunder" and similar terms refer to this entire Mortgage, (f) the term "including" shall mean "including without limitation", and (g) any reference to the Mortgaged Property shall refer to the Mortgaged Property or any part thereof or any estate or interest therein. The captions or headings at the beginning of each Article and Section hereof are for the convenience of the parties and are not a part of this Mortgage.

5.11. Invalidity of Certain Provisions. If the security interest, lien or estate created by this Mortgage is invalid or unenforceable as to any part of the Secured Obligations, or as to any part of the Mortgaged Property, the unsecured or partially secured portion thereof shall be completely paid prior to the payment of the remaining and secured or partially secured portion thereof, and all payments made thereon, whether voluntary or pursuant to foreclosure sale or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion thereof which is not secured or fully secured by this Mortgage.

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5.12. Severability. If any term or provision of this Mortgage or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Mortgage, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Mortgage shall be valid and enforceable to the fullest extent permitted by law.

5.13. Governing Law. This Mortgage shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania, except that the laws of the state where the Land is located shall apply only to the extent necessary for Mortgagee to realize on the security granted hereby.

5.14. Time of Essence; Duration; Survival. Time is of the essence with respect to all of Mortgagee's obligations under this Mortgage and the other Loan Documents. All representations and warranties of Mortgagor contained herein or in any other Loan Document or made in connection herewith or therewith shall survive the making of and shall not be waived by the execution and delivery of this Mortgage or the other Loan Documents, any investigation by Mortgagee or the making of any loan advance under the Loan Agreement. All covenants and agreements of Mortgagor contained herein or in any other Loan Document shall continue in full force and effect from and after the date hereof so long as Mortgagor may borrow under the Loan Agreement and until payment in full of the Secured Obligations. Without limitation, it is understood that all obligations of Mortgagor to make payments to or indemnify Mortgagee shall survive the payment in full of the principal of and interest on the Note.

5.15. Successors and Assigns. This Mortgage shall run with the Land and shall apply to, inure to the benefit of and bind each of the parties hereto and their respective successors and assigns.

5.16. Limited Recourse. Notwithstanding anything to the contrary contained herein or in any other Loan Document, no recourse shall be had, whether by levy or execution or otherwise, for the payment or performance of the Secured Obligations against any partner of Mortgagor, or against any such partner's assets, nor shall any such partner be personally liable for the Secured Obligations, or liable for any deficiency judgment based thereon or with respect thereto, except that recourse may be had against any property pledged or assigned by any such partner to Mortgagee under the Loan Documents; provided, however, that nothing contained herein shall constitute a waiver of any of the Secured Obligations and that nothing contained herein shall limit or otherwise affect Mortgagee's right to recover, nor exculpate or limit the liability of such partners for payment to Mortgagee of, all costs, losses or damages (including attorney's fees) incurred or suffered by Mortgagee related in any way to (a) fraud or

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misrepresentation in connection with this Mortgage or any other Loan Document; (b) the intentional waste or mismanagement of the Mortgaged Property; (c) the misapplication of Loan Advances (as defined in the Loan Agreement), Restoration Funds or other monies or property which are Mortgaged Property; (d) the failure to apply all Cash Flow (as defined in the Loan Agreement) for any month to the payment of interest accruing during such month; (e) the failure to apply all Cash Flow to the payment of the Secured Obligations upon the occurrence of an Event of Default; or (f) any breach of any representation, warranty or covenant contained herein or in any other Loan Document, any violation of any Law, any order, consent decree or settlement by or with any Official Body or any indemnity given by Mortgagor hereunder, in each case relating to environmental matters including cleanup of Hazardous Substances. Nothing set forth in this Section 5.16 shall affect the obligations of the Guarantors under their guaranties.

5.17. Limited Liability of Trustee. This Agreement is executed by American National Bank and Trust Company of Chicago, not personally but solely as Trustee, as aforesaid. All the covenants and conditions to be performed hereunder by American National Bank and Trust Company of Chicago are undertaken by it solely as Trustee, as aforesaid, and not individually, and no personal liability shall be asserted or enforced against American National Bank and Trust Company by reason of any of the covenants, statements, representations or warranties contained in this Agreement.

IN WITNESS WHEREOF, Mortgagor has duly executed and delivered this Mortgage as of the date first above written.

ATTEST:

AMERICAN NATIONAL BANK AND TRUST  
COMPANY OF CHICAGO, not personally,  
but solely as Trustee as aforesaid

Mary J. Schermer  
Title ASSISTANT SECRETARY

By [Signature]  
Title VICE PRESIDENT

[Corporate Seal]

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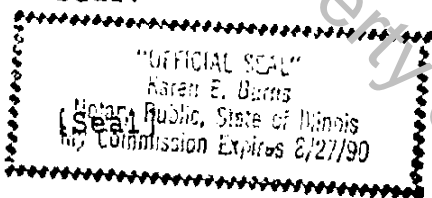
STATE OF *Ill*

COUNTY OF *Cook*

**JUN 06 1988**

On this, the      day of June, 1988, before me, a Notary Public, the undersigned officer, personally appeared SUZANNE G. BAKER *Second Vice President of AMERICAN NATIONAL BANK AND TRUST COMPANY*, a national banking association, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



*[Signature]*  
\_\_\_\_\_  
Notary Public

My Commission Expires:

*[Faint, illegible text]*

*[Faint, illegible text]*

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